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"Sale in the Course of a Business" Under the Sale of Goods Act

Stevenson v *Rogers*

SECTIONS 14(2) and (3) of the Sale of Goods Act (SGA)[1] provide for the implied conditions of satisfactory quality and fitness for purpose respectively. These are core terms in a sale contract that ensure that the goods supplied under the contract are of satisfactory quality and are fit for their purpose. However, it is important to note that under the SGA, these conditions do not apply to every sale but only to a sale by a seller who "sells goods in the course of a business". A person who buys from a seller who does not sell in the course of a business does not get the protection of section 14(2) and (3).

The question of what is a sale "in the course of a business" under section 14(2) of the English Sale of Goods Act 1979 came before the English Court of Appeal in the recent case of *Stevenson* v *Rogers*.[2] The decision is significant and is likely to have important implications in Singapore, where the Sale of Goods Act 1979 applies under the Application of English Law Act. The English Court of Appeal considered the legislative background of section 14(2) and decided that despite a narrow reading taken of the phrase "in the course of business" in other consumer statutes, a wide interpretation should be taken for section 14(2). The effect is that the only relevant question under section 14(2) is whether the seller is a business seller as opposed to someone making a purely private sale outside the confines of any business. Other issues such as whether the sale was an integral part of the seller's business, or whether there was a regularity in the transactions were not

1 Cap 393, 1999 Rev Ed. This statute is a reprint of the English Sale of Goods Act 1979, which was adopted as part of Singapore law by the Application of English Law Act, Cap 7A, 1994 Rev Ed.

2 [1999] All ER 620. Although the rest of this note will focus on s 14(2), the decision in *Stevenson* v *Rogers* also has implications for the interpretation of s 14(3) where the same phrase is used.

important. This is a novel approach, and it will be interesting to see if a Singapore court will take a similar view. If so, it would mean, for instance, that if a law firm upgrading its premises were to conduct a one-off sale of its old office computer system or office furniture, it would be subject to the implied condition under section 14(2). This can be contrasted with a situation where a lawyer renovates his home and sells off his home computer and study furniture, when the sale would not be subject to section 14(2) as it is not in the course of a business.

I. The Decision in *Stevenson* v *Rogers*

The plaintiffs, who had bought a fishing vessel, the Jelle, from the defendant for £600,000, sued him relation to this sale. The defendant carried on the business of a fisherman, and the Jelle was his second fishing vessel. He had bought his first fishing vessel, the Dolly Mopp, many years ago. The Dolly Mopp was sold a few years after he bought the Jelle. The Jelle was in turn replaced by another boat that was used for the defendant's fishing business thereafter. The case turned on whether the sale by the defendant was a sale in the course of a business under section 14(2) so as to attract the implied condition of merchantable quality.[3]

In the High Court, Judge Thompson QC, decided upon a preliminary issue that the sale was not one in the course of a business for the purposes of section 14(2).[4] He relied on the construction applied to similar words in *Davies* v *Sumner*[5] which related to section 1(1) of the Trade Descriptions Act 1968 and *R & B Customs Brokers Co Ltd* v *United Dominion Trust Ltd (R & B Customs Brokers)*[6] which related to section 12(1) of the Unfair Contract Terms Act 1977. Both cases are discussed further below.

In the Court of Appeal, the parties in *Stevenson* v *Rogers* did not dispute that in the field of consumer protection generally, the authorities showed that three broad categories were used to identify whether a sale was made "in the course of a business". These were: (a) a sale in a one-off venture

3 The implied condition is now one of satisfactory quality. In England, the implied condition of merchantable quality in s 14(2) of the Sale of Goods Act 1979 was replaced by the implied condition of satisfactory quality by an amendment contained in the Sale and Supply of Goods Act 1994. A similar amendment was made in Singapore by the Sale of Goods (Amendment) Act 1996.

4 S 14(2) as applicable to the case provided, "[w]here the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality".

5 [1984] 3 All ER 831.

6 [1988] 1 All ER 847.

in the nature of a trade carried out with a view to profit; (b) a sale which is an integral part of the business carried on; and (c) a sale which is merely incidental to the business carried on but which is undertaken with a degree of regularity.[7] It was not disputed that (a) did not apply on the facts of the case and that only (b) or (c) might be relevant. The trial judge had taken the view that there was no regularity in the defendant's sale of fishing vessels as it was no more than the sporadic selling off of a piece of equipment no longer required for the business. On appeal, the plaintiffs argued that the trial judge had wrongly disposed of the matter by focusing on the issue of regularity. Instead, it was argued, he should first have decided whether the sale was indeed an integral part of the defendant's business, because if it had been, no degree of regularity needed to be shown. A more fundamental argument, raised for the first time in the Court of Appeal, was that regardless of the construction taken by the courts in *Davies* v *Sumner* and *R & B Customs Brokers,* both of which concerned other statutes, the words "in the course of a business" in section 14(2) of the SGA should be given a literal and wide interpretation as this was the intention of Parliament. Ultimately, this argument, based on the legislative history of the provision, overshadowed the rest of the discussion and convinced the Court of Appeal that the sale by the defendant was made in the course of a business.

II. The Legislative History Argument

The words "in the course of business" in section 14(2) were introduced into the English Sale of Goods Act 1893 by the English Sale of Goods (Implied Terms) Act 1973. Prior to this, the implied condition of merchantable quality under the 1893 Act applied only "where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not)". The requirement that the seller had to be a dealer in the type of goods sold was criticised by the Committee of Consumer Protection (the Molony Committee) in its report in 1962.[8] The Molony Committee felt that the test should be whether the seller sells "by way of trade" and not whether he makes a habit of trading in similar goods. They were further of the view that the condition of merchantable quality should be applicable even in a situation where a shopper ordered a particular article through a retailer despite knowing that the retailer did not normally stock that type of goods.[9] In advising on the Molony

7 *Supra,* note 2, at 618.
8 Final Report of the Committee on Consumer Protection 1962 (Cmnd 1781).
9 *Ibid,* at para 443.

Committee's recommendations, the Law Commission in their First Report on Exemption Clauses in Contracts went one step further and wanted to ensure that every buyer from a business seller should have a right under the implied condition to receive goods of merchantable quality. They believed that this end would be better achieved if the question under section 14(2) were instead whether the seller sells "in the course of a business".[10] When the Sale of Goods (Implied Terms) Act 1973 was introduced in Parliament, the Minister of State for Trade and Consumer Affairs, Sir Geoffrey Howe, made it clear that the amendments referring to a sale in the course of a business in sections 14(2) and (3) of the 1893 Act were founded on the Law Commission's Report.[11] This meant that the contents of the Report were relevant for assessing the purpose of the amendments.

In *Stevenson* v *Rogers,* Potter LJ, giving the leading judgment in the Court of Appeal,[12] felt that given the varied approaches of the courts to the question of what would constitute "in the course of a business" in differing areas of the law, an ambiguity arose as to the meaning of the words in section 14(2). The rule in *Pepper (Inspector of Taxes)* v *Hart*[13] therefore applied to the interpretation of the section, and court could refer to Hansard as an aid to statutory interpretation.[14] Using Hansard and the Law Commission's Report[15] as a guide, the Court of Appeal found that it was the intention of the 1973 amendments to widen the protection given to a purchaser under section 14(2) from a situation where the seller was a dealer in the type of goods sold, to one where he simply made a sale in the course of a business

[10] Exemption Clauses in Contracts First Report: Amendments to the Sale of Goods Act 1893. (Law Com No 24, Scot Law Com No 12.)

[11] 850 Official Report (5th series) col 1154, quoted in *supra*, note 2, at 631.

[12] The other two judges, Sir Patrick Russell and Butler-Sloss LJ agreed with him.

[13] [1993] 1 All ER 42. This is an important House of Lords decision that for the first time in England, allowed the records of parliamentary debates to be used for statutory interpretation. In the leading judgment, Lord Browne-Wilkinson stated at p 63 that "reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as presently advised I cannot foresee that any statement other than the statement of the minister or other promoter of the Bill is likely to meet these criteria".

[14] *Supra,* note 2, at 624.

[15] Such reference was allowed because of the direct reference to it in the Minister's statement and on the basis enunciated by Lord Simon of Glaisdale in *Black Clawson Ltd* v *Papierwerke Waldhof-Aschaffenburg AG* [1975] 1 All ER at 843-844 and Lord Diplock in *Fothergill* v *Monarch Airlines Ltd* [1980] 2 All ER 696 at 705-706. See *supra*, note 2, at 624.

quite apart from the requirement of regularity of dealing, or indeed any dealing, in the goods. The court was of the view that the relevant words of section 14(2) should be construed widely as their purpose was to distinguish between a sale made in the course of a business and a purely private sale of goods outside the confines of the business carried on by the seller.[16] On this wide interpretation, as the defendant in *Stevenson* v *Rogers* was a business seller, he did sell the fishing vessel in the course of a business.

III. Distinguishing the Authorities

In *Stevenson* v *Rogers,* the Court of Appeal was able to take the wide approach discussed above because it succeeded in distinguishing *Davies* v *Sumner* and *R & B Customs Brokers,* both of which were followed by Judge Thompson QC in the High Court.

The defendant in *Davies* v *Sumner* was a courier who used his own car almost exclusively in the course of his occupation. He sold his car in order to replace it with another for similar use and was charged with the offence of applying a false trade description "in the course of trade or business" in respect of the mileage shown on the odometer. In that case, Lord Keith (with whom the other members of the House of Lords agreed) observed that whilst any disposal of a chattel held for the purposes of a business may, in a certain sense, be said to have been in the course of that business, irrespective of whether the chattel was acquired with a view to resale or for consumption or as a capital asset, section 1(1) of the Trade Descriptions Act 1968 was not intended to cast such a wide net. His Lordship was instead of the view that the expression "in the course of trade or business" in the context of an Act having consumer protection as its primary purpose conveys the concept of some degree of regularity. The case against the accused did not succeed as at the time of the alleged offence, it was not shown that he had established a normal practice of buying and disposal of cars.[17] In considering *Davies* v *Sumner,* the Court of Appeal in *Stevenson* v *Rogers* did not think that these should necessarily be of universal application. The Court of Appeal further distinguished *Davies* v *Sumner* because the case concerned a criminal statute. Any ambiguity had therefore to be construed restrictively.[18] This consideration did not apply in the case of section 14(2) of the SGA, which imposed only civil liability.

[16] *Supra*, note 2, at 623.
[17] *Supra,* note 5, at 832-833.
[18] *Supra,* note 2, at 624-625.

For the Court of Appeal in *Stevenson* v *Rogers,* the more pertinent question was whether the decision in *R & B Customs Brokers,* a civil case, could be distinguished. In that case, the plaintiffs, a company that carried on the business of shipping brokers and freight forwarders, bought a second hand car. The issue before the Court of Appeal was whether they had bought the car "in the course of a business" under section 12 of the Unfair Contract Terms Act 1977 (UCTA).[19] If so, it would have precluded them from relying on the protection of section 6(2) of the UCTA. Under section 6(2), a clause which excluded or restricted liability for breach of the obligations arising from the implied conditions found in sections 13, 14 or 15 of the SGA would be void against a consumer.[20] *R & B Customs Brokers,* like *Davies* v *Sumner,* took a narrow interpretation of the phrase "in the course of a business". Dillon J observed in the Court of Appeal that the sale was at the highest only incidental to the carrying on of the relevant business of the company. He referred to Lord Keith's judgment in *Davies* v *Sumner* and was of the view that under the UCTA, there was also a need for regularity before a sale that was incidental to the carrying on of the business could be said to have been entered into in the course of a business.[21]

When considering *R & B Customs Brokers* in *Stevenson* v *Rogers,* Potter LJ did not feel that the phrase "in the course of a business" in section 14(2) should be interpreted the same way. He made three observations[22] on *R & B Customs Brokers:*

(a) The ratio of the decision is limited to its context, namely the application of section 12 of the UCTA.

[19] Like the SGA, this Act applies in Singapore by virtue of the Application of English Law Act, Cap 7A, 1994 Rev Ed and has been reprinted as Cap 396 in the Singapore statutes. S 12(1) of the UCTA provides: "A party to a contract "deals as a consumer" in relation to another party if (a) he neither makes the contract in the course of a business nor holds himself out as doing so; and (b) the other party does make the contract in the course of a business; and (c) in the case of a contract governed by the law of sale of goods...the goods passing under the contract are of a type ordinarily supplied for private use or consumption".

[20] S 6(2)(a) of the UCTA provides: "As against a person dealing as consumer, liability for breach of the obligations arising from ... ss 13, 14 or 15 of the Sale of Goods Act [seller's implied undertakings as to conformity of goods with description or sample, or as to their quality or fitness for a particular purpose] ... cannot be excluded or restricted by reference to any contract term".

[21] *Supra,* note 6, at 854. In contrast, the judge felt that where the relevant transaction was itself an integral part of the business, the contract could be seen without more as one made in the course of a business.

[22] *Supra,* note 2, at 625.

(b) The court gave no consideration to whether or not the legislative history of section 14(2) might require it to be distinguished from section 12 of the UCTA; or alternatively, if a common interpretation was called for, whether the construction of section 12 should not be subordinated to that of section 14(2).

(c) The *obiter dicta* of Neill LJ in *R & B Customs Brokers* which might suggest that the observations of Lord Keith in *Davies* v *Sumner* should be applied generally in the case of a seller of goods, lacked the benefit of a contrary argument in relation to section 14(2).

As the learned judge had formed a clear view of the proper meaning of section 14(2), he did not feel it right to displace this construction simply to achieve harmony with a decision directed at the meaning of section 12 of the UCTA.[23] The interpretation that gave effect to the legislative intention therefore prevailed.

Despite choosing a different construction from that in *R & B Customs Brokers,* Potter LJ was nevertheless able to point out a sense in which that decision was in harmony with an intention to afford a wide protection to a buyer.[24] In *R & B Customs Brokers,* the narrow view taken of the phrase "in the course of a business" was beneficial to the buyer's case. The finding that the buyer did not buy "in the course of a business" meant that he was dealing as a consumer under section 12 of the UCTA, which in turn enabled him to rely on the protection afforded by section 6 of the UCTA.[25] The

[23] Potter LJ mentioned that had *R & B Customs Brokers* been concerned with the definition of a consumer sale under the Sale of Goods (Implied Terms) Act 1973, he might have held that the phrase "in the course of business" in s 55 of the Sale of Goods Act 1893 (as amended by the 1973 Act) should have been construed in harmony with, and subject to, s 14(2). See *supra,* note 2, at 624. Some discussion of legislative history might be helpful to understand the judge's comments. Prior to the passing of ss 6 and 12 of the UCTA, s 4 of the Sale of Goods (Implied Terms) Act 1973 had amended s 55 of the Sale of Goods Act 1893 to prevent any exclusion of the provisions of ss 13, 14 or 15 of the SGA in the case of a consumer sale. At the same time, s 3 of the Sale of Goods (Implied Terms) Act 1973 amended ss 14(2) and 14(3) of the Sale of Goods Act 1893. All the three amended sections (*ie,* ss 55, 14(2) and 14(3)) contained the phrase "in the course of a business". This would have provided support for the view alluded to by Potter LJ, that the phrase should be construed in the same way in these selected sections as they arose from the same amendment statute. However, as s 4 of the Sale of Goods (Implied Terms) Act 1973 was repealed and replaced by ss 6 and 12 of UCTA, the issue of consistency was no longer relevant.

[24] *Supra*, note 2, at 626.

[25] See *supra*, notes 19 and 20.

situation was quite the opposite in *Stevenson* v *Rogers,* where a wide rather than a narrow reading of the phrase afforded more protection to the buyer because under section 14(2) of the SGA, the buyer would only be protected if the seller was selling "in the course of a business".

IV. Consumer Protection under the SGA

Even though *Stevenson* v *Rogers* might be seen to further the aim of consumer protection highlighted by the Law Commission in their First Report,[26] it may be argued that such an approach imposes too onerous a burden on business sellers, especially in contrast with private sellers who, being protected by the traditional notion of *caveat emptor,* are not subjected to the same liability. For instance, in some transactions, business sellers may be in no better position than private sellers to ensure the quality of the goods. This can be illustrated by looking at three situations: a sale of furniture by a furniture store; a sale of furniture by a private individual to make way for new items in his home; and a one-off sale of furniture by a one-man law firm pursuant to an office renovation. It would probably be acceptable to most people that the sale by the furniture store should be caught by section 14(2), and that the sale by the private individual is not. However, there may be less agreement as to the appropriate level of liability that should apply to the law firm. Should the law firm's liability be the same as that of the furniture store or the private seller? The application of the *Stevenson* v *Rogers* approach would impose the same liabilities on the one-man law firm under section 14(2) as on the furniture store, whilst the private seller would not be subject to section 14(2) even if he were a knowledgeable and habitual seller of unwanted second-hand furniture from his home. Not everyone will agree with such a result. For instance, some might feel that the one-man law firm should be classified together with the habitual private seller as opposed to the furniture store. The allocation of liability under *Stevenson* v *Rogers* may not therefore always seem logical or fair on the particular facts of the case.

Whilst the original Sale of Goods Act 1893 did not distinguish between a commercial sale and a consumer sale, later amendments went some way towards addressing this. The provisions currently applying under the SGA can be divided into at least three types: those applying only to a buyer

[26] *Supra,* note 10.

who deals as a consumer;[27] those applying only to a seller selling in the course of a business;[28] and those applying to all buyers and sellers regardless of their status, which form the majority of the terms in the SGA.[29] As the first two types of provisions apply only selectively, it is relevant to ask what are the special characteristics of business sellers and consumer buyers respectively that justify their being singled out for particular liability or particular protection in these cases. The answer to this question might also help in understanding the blanket approach taken in *Stevenson* v *Rogers* that does not vary according to the nature of the business seller.

In considering why a business seller had to be liable for a breach of the implied terms of sections 14(2) and (3) when a private seller did not, a writer, de Lacy, suggested that some relevant factors might include the experience, financial resources and superior bargaining power of business sellers in general.[30] However, these factors do not necessarily apply to every business seller who falls under the *Stevenson* v *Rogers* test. The seller in that case was one such example. Nevertheless, as de Lacy writes, "it is a reasonable deduction that greater benefits will accrue to the class of buyers taken as a whole from this system, rather than by seeking to protect the odd isolated case where a seller fails to fit into the typical role model on which the justifications are based".[31] This argument is a strong one that

[27] See ss 15A, 30(2A), and 35(3) of the SGA. Under s 61(4A) of the SGA, "references...to dealing as consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act (Cap 396)". Another relevant provision is s 55 of the SGA which provides, "[w]here a right, duty or liability would arise under a contract of sale of goods by implication of law, it may (subject to the Unfair Contract Terms Act (Cap 396)) be negatived or varied by express agreement, or by the course of dealing between the parties, or by such usage as binds both parties to the contract". Ss 6 and 12(2) of the UCTA are most relevant to consumer protection and have been set out at notes 20 and 19.

[28] See ss 14(2) and (2) of the SGA. The implied conditions of satisfactory quality and fitness for purpose apply only where the seller sells in the course of a business.

[29] These would be made up of all the sections of the SGA that do not fall within the previous two categories. Whilst many of these provisions also serve a consumer protection function, they are essentially directed at protecting all buyers. For instance, other than satisfactory quality and fitness for purpose, mentioned in the footnote above, the other implied conditions relating to title (s 12(1)); correspondence with description (s 13(1)) and sale by sample (s 15) apply without restriction to all sales.

[30] See de Lacy, "Selling in the Course of a Business Under the Sale of Goods Act 1979" [1999] 62 MLR 776 at p 784.

[31] *Ibid*, at 785. De Lacy further points out that the decision in *Stevenson* v *Rogers* was just on a preliminary point and did not decide whether the seller was actually liable for breach of s 14(2). In deciding the issue of whether there was an actual breach of s 14(2), the test was whether the goods were of satisfactory quality. This did not impose an absolute standard of liability. Even a business seller who was caught by s 14(2) might not ultimately be liable for breach, as satisfactory quality would depend on all the relevant circumstances.

is based on pragmatic considerations and may justify the broad approach taken in *Stevenson* v *Rogers.* Further refinement to distinguish between different categories of business sellers might be impractical and result in time being wasted to prove these differences.

The factors that justify imposing special liability on business sellers might also apply to explain the special protection that is given to a buyer who deals as a consumer, with opposite results. For instance, it can be argued that a buyer dealing as a consumer should be protected as he generally has less experience, financial resources and bargaining power than his seller. This argument is made all the more powerful by the fact that under the definition of "dealing as a consumer",[32] a buyer must not make the contract in the course of a business, whilst his seller must make the contract in the course of a business.[33] By the same token, the reasons mentioned above for applying liability to business sellers generally rather than take into account isolated cases where the seller does not fit into the role model should also apply in relation to protecting consumer buyers without making fine distinctions between them. However, as the analysis in the following paragraph will show, in this aspect, there is no parity in the law dealing with business sellers on the one hand and consumer buyers on the other.

After *Stevenson* v *Rogers,* every business seller, no matter how disadvantaged or ignorant, would be selling in the course of a business and subject to section 14(2). The mirror image of this rule should be that any consumer buyer, no matter how savvy or powerful he might be, should be protected against his seller. This would mean, for instance, that a multinational company buying a television set for its staff common room should be equally protected under section 6 of the UCTA from clauses excluding the seller's liability for implied conditions under the SGA as a private buyer would be. However, the mirror may be cracked. The special protection given to consumer buyers in the UCTA and the SGA apply only to a person "dealing as a consumer" under section 12(1) of the UCTA. To be dealing as a consumer, a buyer must not be making the contract "in the course of a business". In interpreting this phrase narrowly rather than broadly, the Court of Appeal in *R & B Customs Brokers* went some way towards protecting business buyers who, for purposes only incidental to their business, purchase goods commonly supplied for private use or consumption. However, because the court in

[32] This is the definition in s 12(1) of the UCTA (set out in note 19) which applies not just to that statute, but also to the SGA by virtue of s 61(4A) of the SGA.

[33] In contrast, for a business seller, there is no requirement under the *Stevenson* v *Rogers* approach for the buyer to be dealing as a consumer. The implied conditions under s 14(2) and (3) would apply even if the buyer were buying in the course of a business.

that case required a degree of regularity where the transaction was incidental to the carrying on of the relevant business of the company,[34] the decision can be criticised for not going as far as it could have in protecting consumers. It is hard to see why regularity should be relevant in deciding the issue of whether a buyer contracts in the course of a business. Why should the position be different if the multinational company in the example above regularly bought television sets for the entertainment of its huge and fast-expanding staff; or if the directors of the shipping company in *R & B Customs Brokers* were car enthusiasts who delighted in changing cars every few months? Why should any increased regularity in the transactions in these cases mean that the respective companies were no longer dealing as consumers and therefore no longer protected under the relevant provisions?

V. Effect of Decision in *Stevenson* v *Rogers* on *R & B Customs Brokers*

Although the decisions in *Stevenson* v *Rogers* and *R & B Customs Brokers* can co-exist without a direct clash, it remains to be seen whether either case might be overruled if the phrase "in the course of a business" in the relevant sections were to be considered in future by the House of Lords.[35] Should there be such an opportunity, the decision in *Stevenson* v *Rogers,* with its detailed consideration of legislative purpose, is likely to prevail.

A more difficult question is whether the *R & B Customs Brokers* interpretation of the phrase "in the course of a business" in section 12 of the UCTA should be abandoned in favour of one that is in line with the interpretation of the same phrase in section 14(2) of the SGA in *Stevenson* v *Rogers.* This might seem ideal from the point of view of achieving uniformity of interpretation. However, such a result will have the disadvantage of undermining the legislative aim of consumer protection, as it will make it harder for section 6(2) of UCTA to work in favour of a buyer.[36] Here, an application of the broad interpretation of the phrase "in the course of a business" as in *Stevenson* v *Rogers* would mean that any business that buys goods, regardless of whether this is for the purpose of the business or not, will not be dealing as a consumer and therefore would be unable to rely on the protection of section 6(2) of UCTA.

[34] See *supra,* note 21 and accompanying text.

[35] The law report indicates that the seller in *Stevenson* v *Rogers* were given leave to appeal to the House of Lords. De Lacy notes that the defendant decided not to proceed: *supra,* note 30, at 791.

[36] See also the text accompanying notes 24 & 25.

In view of this, it may be that the legislative aims of consumer protection stated in the Law Commission's First Report on Exemption Clauses in Contracts[37] would best be served by having the courts apply a varying interpretation to the phrase "in the course of a business" depending on the context. Whilst both the SGA and UCTA can be seen as consumer protection statutes, it may be argued that the functions of section 14(2) of the SGA and section 12(1) of UCTA are quite different, thus justifying such a varying approach. More specifically, section 14(2) is meant to cast a wide net over business sellers so as to impose liability on them under the SGA; whereas the definition in section 12(1) is meant to exclude the narrow class of business buyers who are deemed not to need special protection under the UCTA. This approach would allow the two different interpretations in *Stevenson* v *Rogers* and *R & B Customs Brokers* to co-exist on a reasoned basis. However, this approach of applying varying judicial interpretations to the same phrase in different though related statutes might seem too untidy.[38] Another solution might be for legislative intervention to redefine and clarify the meaning of the phrase "dealing as a consumer" for the purpose of section 12(1) of the UCTA.[39]

VI. The Singapore Position

As the Court of Appeal in *Stevenson* v *Rogers* interpreted section 14(2) by following the House of Lords decision in *Pepper* v *Hart*[40] and referring to Hansard, an important issue is whether a similar approach can be taken in Singapore to reach the same decision.

There is no doubt that Singapore courts may in appropriate cases refer to parliamentary material as an aid to statutory interpretation. The position taken in *Pepper* v *Hart* was followed in a few Singapore cases[41] and later

37 *Supra,* note 10.

38 If full effect were to be given to the legislative intention of consumer protection, it might even be argued that there should be different interpretations of the phrase "in the course of a business" in ss 12(1)(a) and 12(1)(b) of the UCTA respectively, as the first is aimed at identifying consumer buyers who would benefit from protection; whereas the second is meant to impose liability on business sellers. The relevant provisions are laid out in note 19.

39 It would be useful if there is such legislative intervention for the legislature to consider whether to retain the requirement, established by *R & B Customs Brokers* and criticised earlier in this article, of regularity in relation to transactions which are incidental to the buyer's business.

40 *Supra,* note 12.

41 See, *eg, PP* v *Lee Ngin Kiat* [1993] SLR 181 and *Tan Boon Yong* v *Comptroller of Income Tax* [1993] 2 SLR 48.

enlarged upon by amendments to the Interpretation Act in 1993.[42] Section 9A(2)(a)(i) of the Interpretation Act[43] allows reference to extrinsic material, *inter alia,* to ascertain the meaning of a statutory provision that is "ambiguous or obscure". As the Singapore courts are likely to accept the Court of Appeal's ruling in *Stevenson* v *Rogers* that the meaning of section 14(2) of the SGA is ambiguous,[44] section 9A(2)(a)(i) would probably apply to allow reference to extrinsic material.

The question would then be whether Singapore courts could refer to English parliamentary materials when they are faced with ambiguity in their interpretation of an English statute that applies in Singapore by virtue of the Application of English Law Act. In the case of such English statutes, the main discussion relating to the purpose of individual provisions is likely to have taken place in England rather than in Singapore[45] and a consideration of English parliamentary material would be necessary to ascertain the legislative intention relating to the provisions. Further, the fact that the relevant English statutory provision was selected for application in Singapore is good indication that the Singapore legislature agreed with its legislative purpose. Reference to English parliamentary materials seems to be possible under section 9A(2) of the Interpretation Act. This section is couched in wide terms and allows reference to any material that is capable of assisting in the ascertainment of the meaning of the provision in question.[46]

However, it has been suggested that pragmatic considerations about the inaccessibility of the legislative history of English statutes may lead a Singapore court to hold that no records of English extrinsic materials are

[42] This was done by the Interpretation (Amendment) Act 1993, which inserted s 9A into the Interpretation Act, Cap 1, 1985 Rev Ed. For a full discussion of these amendments, see Beckman and Phang, "Reform of Statutory Interpretation in Singapore", [1994] 15 *Statute Law Review* 69.

[43] Cap 1, 1999 Rev Ed.

[44] See the text accompanying notes 12 and 13.

[45] For instance, during the Second Reading of the Application of English Law Bill, there was an absence of any detailed consideration of the relevant English statutes by the Minister. See *Parliamentary Debates Singapore, Official Report,* vol 61, no 7 at cols 609-613.

[46] Alternatively, it might be allowed under 9A(3)(c) or (d) if the references to Parliament are interpreted not just to include the Singapore Parliament but, in the case of an English statute under the Application of English Law Act, also the English Parliament. The relevant part of s 9A(3) provides, "[w]ithout limiting the generality of subsec (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include ... (c) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament; (d) any relevant material in any official record of debates in Parliament...."

to be admissible when interpreting English statutes that are applicable in Singapore.[47] Even if this observation is true generally, it has little application where the legislative purpose of a particular provision is laid out and examined in an easily accessible English decision such as *Stevenson* v *Rogers.* In such a case, it would be odd for a Singapore court not to take note of the English parliamentary material when interpreting the relevant provision.

There is, however, a local decision on section 14(2) that might affect the application of a *Stevenson* v *Rogers* interpretation to the section. This is the case of *Darwish MKF Al Gobaishi* v *House of Hung Pte Ltd,*[48] a decision of Selvam J in the Singapore High Court. One of the questions that arose there was whether the gemstones sold were of merchantable quality under section 14(2). Selvam J made this observation on the meaning of the phrase "in the course of a business":

> A sale is done "in the course of business" if selling merchandise of the kind in question is the declared vocation of the seller. In Singapore there is no difficulty in understanding that expression. If a limited company or a business firm declares itself a seller or habitually sells a given product or merchandise either as a manufacturer or trader, then anything within the class of that product or merchandise sold by that company or firm is sold in the course of business. This may be contrasted with a seller, whose normal vocation being not the selling of the product or thing, sells it as he has no need for it *[sic].* For example a teacher selling his car or a lawyer selling his computer because he intends to acquire a new one would not be selling the car or the computer in the course of business.[49]

Selvam J's example of a lawyer selling his old computer may seem at first sight to be similar to the situation of a fisherman selling his fishing boat as in *Stevenson* v *Rogers.* If so, his view that such a sale would not be in the course of business might seem to be contrary to the decision reached in *Stevenson* v *Rogers.* However, this would not be the case if the learned judge had in mind a lawyer who was selling his home computer as opposed to his office computer. It would be perfectly consistent with the interpretation of section 14(2) in *Stevenson* v *Rogers* to have the sale of the home computer fall outside the course of business of a lawyer. It is the sale by the lawyer

[47] See Beckman and Phang, "Reform of Statutory Interpretation in Singapore", [1994] 15 *Statute Law Review* 69 at p 93.
[48] [1998] 3 SLR 435.
[49] *Ibid,* at 459.

of his office computer that would be caught under *Stevenson* v *Rogers.* In any case, the extract from Selvam J's judgment quoted above should not be taken to be an exhaustive statement of the situations under Singapore law when a seller is selling "in the course of a business" under section 14(2). It is more likely that the learned judge was merely setting out the most obvious of the various situations that would fall under that section. He did not have to go deeper than that, for on the facts of the *Darwish* case, the sellers were clearly one of the biggest dealers in the type of coloured gemstones in question. The way still seems open, therefore, for a Singapore court considering section 14(2) to adopt the interpretation taken in *Stevenson* v *Rogers.*

VII. Conclusion

The purposive approach taken in *Stevenson* v *Rogers* to interpreting the words "in the course of a business" in section 14(2) of the SGA is a sound one based on its legislative history. It establishes that every business seller would be potentially liable under section 14(2) even if the sale was not an integral part of his business, and there was no regularity in the transactions. This position is in line with the legislative aim of protecting every buyer who buys from a business seller. Such focus on legislative intent in the Court of Appeal decision in *Stevenson* v *Rogers* might in turn spark off a re-examination of related decisions such as *R & B Customs Brokers* that interpreted the same phrase differently, albeit in another statute. It is likely that the interpretation taken in *Stevenson* v *Rogers* will be highly persuasive in a Singapore court. On the law as it stands, there seem to be no serious obstacles in the way of a Singapore court that wishes to follow that decision.

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